

**LABOUR DEPARTMENT**

The 22nd January, 1986

No. 9/7/86-Lab./166.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workmen and the management of Administrator, Municipal Committee, Rohtak.

**BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.**

Reference No. 233 of 84.

between

**SHRI SARUP LAL, WORKMAN AND THE MANAGEMENT OF ADMINISTRATOR, MUNICIPAL COMMITTEE, ROHTAK.**

Shri H. R. Vats, A. R. for the workman.

Shri Ram Singh Joshi, A. R. for the management.

**AWARD**

1. In exercise of the powers conferred by clause (c) of sub section (1) of section 19 of the Industrial Dispute Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Sarup Lal and the management of Administrator, Municipal Committee, Rohtak, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 38156—61, dated 16th October, 1984:—

Whether the termination of services of Shri Sarup Lal is justified and, in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Peon since 20-6-61 against leave vacancy and from 28th June, 1979 to 24th November, 1982 on regular basis, but the respondent choose to terminate his services unlawfully just to accommodate its favourits, though the work and conduct of the workman all through has been satisfactory.

3. In the reply filed by the respondent, the claim of the petitioner has been controverted in as much as, it is alleged that the petitioner was employed on daily wages and not as a regular

employee as alleged. It is further alleged that the petitioner never claimed reinstatement prior to 12th January, 1984, the date on which the demand notice was raised and so, the present claim is barred under section 33-C(i) of the Industrial Disputes Act, 1947. It is further alleged that since the services of all the employees of Municipal Committee are governed by the Punjab Civil Service Rules, so, jurisdiction of this Court stands ousted. It is also alleged that the Labour Department of the Government of Haryana has also held that the respondent committee is not an "industry" as defined in section, 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and so, it is alleged that the reference is bad in law.

4. On the pleadings of the parties, the following issue was settled for decision on 21st March, 1985:—

1. Whether the termination of services of Shri Sarup Lal is justified and in order? If not, to what relief is he entitled?

5. In support of his claim, the petitioner appeared as his own witness as WW-1 and the management examined Shri Ram Singh Joshi, office Superintendent of the respondent committee as MW-1.

6. Heard.

7. The petitioner made a statement completely in corroboration of the statements made in the Claim Statement, so, I need not suffer repetition. He denied the suggestion that he remained employed on daily wages till his date of termination. Shri Ram Singh Joshi, MW-1 office Superintendent of the respondent committee stated that the petitioner was employed as a Peon in the year 1979 against a leave vacancy, in which capacity he served up to the year 1981 and thereafter the Deputy Commissioner made regular appointment of Shri Jai Naram on 18th November, 1982 and so, the services of the petitioner were dispensed with.

8. There is no denying the fact that the respondent committee did not comply with the mandatory provisions of section 25F of the said Act while terminating the services of the petitioner, because no notice pay or retrenchment compensation was paid to him, though the petitioner has actually worked for more than 240 days with the respondent during the last 12 calendar months from the date of his termination. This is evident even from the data furnished by the respondent in the

Court on 26th November, 1985 that the petitioner has worked for 320 days with the respondent even from 1st January, 1982 to 18th November, 1982. While calculating 240 days the Court has to take into consideration last twelve calendar months from the date of termination. So, there is no escape from the conclusion that the petitioner has worked for more than 240 days with the respondent during the last twelve calendar months from the date of his termination and as such, statutory provision of section 25F are fully attracted in this case, compliance of which was never made by the respondent, and so, the order of termination passed was illegal and arbitrary and cannot be sustained.

9. Though, there is no separate issue on the plea taken by the respondent that the respondent committee is not an "industry", even there is no difficulty in disposing of the same. The main prop of the respondent in support of this Plea Exhibit M-3 a copy of the letter issued by the Labour Department, Government of Haryana that the Board of School Education Haryana is not an "industry" because its employees are governed by the provisions of Punjab Civil Service Rules. Taking a cue from this letter, on behalf of the respondent it was contended that since the provisions of Punjab Civil Service Rules are applicable to the employees of the respondent committee, so, Industrial Disputes Act, 1947 will not apply. This contention is absolutely unfounded. In the **Bangalore Water Supply and Sewerage Board** case reported in 1978 Lab. LC. 467 a seven Bench Judges of the Hon'ble Supreme Court of India dealt in detail about the scope, sweep and ambit of the term "industry" as defined in section 2(j) of the said Act. There, Lordships were endorsing the law laid down in **Nagpur Municipality** reported in AIR 1960 S.C. 675 observed in para 67 of the judgement as under:—

"Sri Justice Subba Rao, with uninhabited logic, charges this thought and reaches certain tests in **Nagpur Municipality** (AIR 1960 SC 675), speaking for a unanimous bench. We respectfully agree with much of his reasoning and proceed to deal with the decision. If the ruling were right, as we think it is, the riddle of "industry" is resolved in some measure. Although foreign decisions, words and phrases, lexical plenty and definitions from other legislations, were read before us to stress the necessity, of direct co-operation between employer and employees in the essential product of the undertaking, of the

need for the commercial motive, of services to the community, etc., as implied inarticulately in the concept of "industry", we bypass them as but marginally persuasive. The rulings of this Court, the language and scheme of the Act and the well-know canons of construction exert real pressure on our judgement. And, in this latter process, next to **Banerji** (AIR 1953 S.C. 58) comes **Corporation of Nagpur** (AIR 1960 SC 675) which spreads the canvas wide and illumines the expression analogous to trade or business, although it comes a few days after **Hospital Mazdoor Sabha** (AIR 1960 SC 610) decided by the same bench."

10. These observations of the Supreme Court clinches the controversy in favour of the petitioner and there is no difficulty in holding that the respondent Municipality, especially its administrative wing falls within the ambit of the term "industry" as defined in section 2(j) of the said Act and as such the provisions of the Industrial Disputes Act, 1947, will apply in this case.

11. In the light of my fore-going discussion, there is no difficulty in holding that the order of termination passed against the workman was illegal, unlawful and arbitrary, which was passed in flagrant dis-regard of the mandatory provisions of section 25F of the said Act and as such, the same is set aside and since the demand notice was raised by the petitioner after a lapse of just more than one year of his termination, he cannot be deprived from the benefits of back wages, because the Courts have usually frowned upon references delayed for more than three years after termination. So, the workman is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

Dated the 24th December, 1985.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Hissar.

Endorsement No. 233-84/15, dated the 2nd January, 1986.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industries Disputes Act, 1947.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Hissar.

committee is only a department of the Government. It performing sovereign acts. Hence it is not covered under the definition of industry. He has relied upon the judgement of our own High Court in State of Punjab *versus* Kuldip Singh and another, 1983 L.I.C. page 83 and Shri Om Parkash *versus* Executive Engineer and another, 1984 LIC-Page 1165. In these judgements reliance has been placed on the full bench judgement of Hon'ble Supreme Court in Bangalore Water Supply Boards *versus* A Rajappa: 1978 L.L.J.-page 338. In State of Punjab *versus* Kuldip Singh in which it is held that sovereign or the legal functions of the State, which are preminarily and inalienable rights of Constitutional Government are held to be not industry. Economic adventures clearly partaking of the nature of trade and business undertaken by it as part of its welfare activities has been held to be industry. Organised activity not stamped with the total indicia of business yet bearing a resemblance to or being analogous to trade and business is also held to be an industry. The residuary organised governmental activity which may not come within the ambit of the aforesaid three categories.

In the present case there is no economic adventures of the respondent committee. There is organised activities though it is not stamped with the total indicia of business yet being resemblance to or being analogous to trade and business because market fees is collected from the buyers out of this 30 per cent of this is sent to the Board and remaining is spent on welfare activities, electricity water and rest houses. In Bangalore Water Supply case it has been held that business of profit motives is irrelevant and emphasis on employer and employee relationship. In the present case the relationship between the employer and employee is not of same as between Government and the employee. The relationship as employer and employee is an industry. The services of the claimant has been extended from time to time. It is further held that industry means undertaking, calling and service adventures analogous to trade or business. In

the present case market committee definitely render service adventures like arranging water, electricity and rest houses so in my opinion it is an industry and the claimant is a workman. Hence this issue is decided against the management.

#### ISSUE No. 2:

It is admitted case of the parties that the claimant was appointed on 1st July, 1980 and that his services were terminated on 1st October, 1982. The services of the claimant were continuous. Hence he had completed more than 240 days of service on 1st October, 1982. Provisions of Section 25-F were not complied with while terminating his services. Hence the order of terminating the services of the workman is illegal and unjustified. He is, therefore, entitled to reinstatement with continuity of service. He is entitled to back wages only upto 1st December, 1983. A letter was written to him to join the service from 1st December, 1983, but he did not join the service. He should have joined the service from 1st December, 1983, and should have claimed the wages for the prior period through this Court. So the claimant is not entitled wages from 1st December, 1983 till the date of joining.

The award is given accordingly.

Dated the 15th November, 1985.

R. N. SINGAL,

Presiding Officer,  
Labour Court, Faridabad.

Endorsement No. 8, dated the 7th January, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. SINGAL,

Presiding Officer,  
Labour Court, Faridabad.